(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

[61 FR 64282, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 62 FR 25458, May 9, 1997]

§ 740.13 Technology and software—unrestricted (TSU)

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); ''mass market'' software subject to the General Software Note; and unrestricted encryption source code. Note that encryption software is not subject to the General Software Note (see paragraph (d)(2) of this section).

(a) *Operation technology and software*—(1) *Scope.* The provisions of paragraph (a) permit exports and reexports of operation technology and software. ''Operation technology'' is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products that are lawfully exported or reexported under a license, a License Exception, or NLR. The ''minimum necessary'' operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the product. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology.

(2) *Provisions and destinations*—(i) *Provisions.* Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) *Destinations.* Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

(b) *Sales technology*—(1) *Scope.* The provisions of paragraph (b) authorize exports and reexports of sales technology. ''Sales technology'' is data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) *Provisions and destinations*—(i) *Provisions.* Sales technology may be exported or reexported provided that:

(A) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(ii) *Destinations.* Sales technology may be exported or reexported to any destination.

NOTE: Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Export Administration.

(c) *Software updates.* The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors (''fixes'' to ''bugs'') in

software lawfully exported or reexported (original software). Such software updates may be exported or reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) *General Software Note: "mass market" software—*(1) *Scope.* The provisions of paragraph (d) authorize exports and reexports of "mass market" software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).

(2) *Software not eligible for this license exception.* This license exception is not available for certain encryption software controlled under ECCN 5D002. (Refer to the Cryptography Note in Category 5—Part 2 of the Commerce Control List for information on Mass Market Encryption commodities and software. Also refer to §§ 742.15(b)(1) and 748.3(b) of the EAR for information on item classifications for release from "EI" controls and "NS" controls).

(3) *Provisions and destinations—*

(i) *Destinations.* "Mass market" software is available to all destinations except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(ii) *Provisions.* "Mass market" treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

(*1*) Over the counter transactions;

(*2*) Mail order transactions; or

(*3*) Telephone call transactions; and

(B) Designed for installation by the user without further substantial support by the supplier.

(e) *Unrestricted encryption source code.* (1) Encryption source code controlled under ECCN 5D002, which would be considered publicly available under § 734.3(b)(3) of the EAR and which is not subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed with the source code is released from EI controls and may be exported or reexported without review under License Exception TSU, provided you have submitted written notification to BXA of the Internet location (e.g., URL or Internet address) or a copy of the source code by the time of export. Send the notification to BXA at crypt@bxa.doc.gov with a copy to ENC Encryption Request Coordinator, or see § 740.17(e)(5) for the mailing addresses. Intellectual property protection (e.g., copyright, patent or trademark) will not, by itself, be construed as an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code.

(2) Object code resulting from the compiling of source code which would be considered publicly available can be exported under TSU if the requirements of this section are otherwise met and no fee or payment (other than reasonable and customary fees for reproduction and distribution) is required for the object code. See § 740.17(b)(4)(i) for the treatment of object code where a fee or payment is required.

(3) You may not knowingly export or reexport source code or products developed with this source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(4) Posting of the source code or corresponding object code on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone would not establish "knowledge" of a prohibited export or reexport, including that described in paragraph (e)(2) of this section. In addition, such posting would not trigger "red flags" necessitating the affirmative duty to inquire under the "Know Your Customer" guidance provided in Supplement No. 3 to part 732 of the EAR.

[61 FR 64283, Dec. 4, 1996, as amended at 61 FR 65464, Dec. 13, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25458, May 9, 1997; 65 FR 2496, Jan. 14, 2000; 65 FR 62604, Oct. 19, 2000; 66 FR 42110, Aug. 10, 2001]

§ 740.14 Baggage (BAG).

(a) *Scope.* This License Exception authorizes individuals leaving the United